

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	4:08CR3125
)	
v.)	
)	
JOHN FORREST,)	MEMORANDUM AND ORDER
)	
Defendant.)	
_____)	

John Forrest (Forrest) through counsel has filed a “*Johnson*” § 2255 motion (filing no. [135](#)). He did so after receiving permission from the Court of Appeals to file a successive motion and the “case is hereby transferred to the District of Nebraska for filing as of June 15, 2016, the date the application was filed in this court.” (Filing no. [133](#); emphasis added).

Two things need to be clarified. There are now two pending § 2255 motions. (Filing no. [129](#); filing no. [135](#).) The first one was clearly a “place holder” filed before the first anniversary date of *Johnson* and before the Court of Appeals ruled on the request for permission to file a successive motion. To clean up the record, I will deny the first § 2255 motion without prejudice and consider the second one as having been filed on June 15, 2016 as dictated by the Court of Appeals.

Second, I have previously stayed consideration of these types of cases. That is,

Counsel shall promptly advise me when the United States Court of Appeals for the Eighth Circuit or the United States Supreme Court decides one way or the other whether the *Johnson* decision applies to a case (i) where the underlying criminal action was final before *Johnson* was decided and (ii) that involves a challenge to the “residual clause” of U.S.S.G. § 4B1.2(a)(2) based upon *Johnson*.

(Filing no. [130](#).)

Given the fact that the second § 2255 motion was filed *after* the foregoing stay order, I am unsure whether counsel for Forrest believes the conditions set forth in that order have now been satisfied. I will require counsel to advise me.

IT IS ORDERED:

1. The § 2255 motion (filing no. [129](#)) is denied without prejudice.
2. On or before Monday, December 12, 2016, counsel for Forrest shall file a response to this Memorandum and Order stating whether the conditions set forth in the stay order (filing no. [130](#)) have now been satisfied, and, if so, citing the case or cases that satisfy the conditions.

DATED this 29th day of November, 2016.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge